

1 the parties' arguments and the applicable federal law, the court
2 DENIES plaintiff's request to renew her motion to reopen No 00-
3 1954.

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5 I

6 A review of the procedural background of these cases is
7 appropriate. Plaintiff filed her complaint in No 00-1954 on behalf
8 of herself and her deceased mother, Elizabeth Marasovic, on May 31,
9 2000. Doc #1. Plaintiff's mother passed away on June 7, 1999,
10 during an effort to resuscitate her by the staff at Shields-
11 Richmond Nursing Center, a convalescent hospital in El Cerrito,
12 California. Plaintiff brought federal and state claims against the
13 various medical providers as well as other entities and individuals
14 involved in providing medical care to plaintiff's mother or
15 investigating potential elder abuse in the days prior to her death.
16 Upon the filing of the complaint, No 00-1954 was assigned to the
17 undersigned. Over the course of the next sixteen months, plaintiff
18 thrice amended her complaint (Docs ## 11, 42 and 67). Upon
19 defendants' motion to dismiss the third amended complaint (TAC), on
20 August 29, 2001, the court dismissed all federal claims against all
21 defendants except Contra Costa county and two of its employees,
22 Rhonda Edwards and Christine Mulder (collectively, "county
23 defendants"). Doc #91. As a result of this order, plaintiff had
24 two remaining federal claims against the county defendants stemming
25 from an allegedly unconstitutional search of plaintiff's residence
26 on June 1, 1999.

27 Additionally, the court's August 29, 2001, order
28 dismissed plaintiff's state law claims against the county

1 defendants because plaintiff had not alleged that she had filed a
2 claim with Contra Costa county as required by the California
3 Government Tort Claims Act (GTCA), Cal Gov Code § 900 et seq. See
4 id at 25. Finally, the court concluded that further amendment to
5 the TAC would be futile and, therefore, the court denied
6 plaintiff's request for leave to file a fourth amended complaint.
7 See id at 26.

8 On September 7, 2001, plaintiff sought leave to file a
9 motion for reconsideration of the court's dismissal with prejudice
10 of her state law claims against the county defendants, asserting
11 that she had, in fact, timely filed a claim with Contra Costa
12 county pursuant to the GTCA. Doc #94. The court concluded that
13 this evidence might indeed require reconsideration of the court's
14 conclusion that further amendment of plaintiff's complaint would be
15 futile. Thus plaintiff was given leave to file a motion for
16 reconsideration, which she did on September 16, 2002, and
17 supplemented on January 13, 2003. See Docs ##107, 112. On January
18 2, 2003, plaintiff also filed a motion she styled a motion to add
19 additional defendants. See Doc #111.

20 On February 12, 2003, the court denied plaintiff's motion
21 for reconsideration, but gave plaintiff leave to file a motion to
22 file a fourth amended complaint (FAC) to include new claims and/or
23 new defendants. Doc #115. Plaintiff's motion was due on or before
24 March 20, 2003. Id. On March 21, 2003, plaintiff moved the court
25 for an extension of time (Doc #117), which the court granted on
26 July 9, 2003 (Doc #118), giving plaintiff until August 7, 2003, to
27 file the FAC. The deadline passed without plaintiff filing the
28 FAC, and on September 30, 2003, the court sua sponte dismissed the

1 case without prejudice. Doc #121.

2 On August 11, 2004, more than fifteen months after her
3 last filing and almost one year after dismissal, plaintiff
4 unexpectedly filed a motion to reopen the case. Doc #124. In that
5 motion, plaintiff asserted that, unbeknownst to her, the court had
6 an incorrect address on file for her and thus she never received
7 either the court's July 9, 2003, order granting her leave to file
8 the FAC, nor the court's September 30, 2003, order dismissing her
9 case. Id. The court denied plaintiff's request to reopen on
10 August 17, 2004, giving two reasons: (1) the orders were sent to
11 the address the court had on file for plaintiff, and it was her
12 responsibility to ensure that the address on file was correct; and
13 (2) plaintiff's proper recourse was not to file a motion to reopen
14 the closed case, but rather to open a new case and file a new
15 complaint. Doc #125.

16 On September 29, 2004, plaintiff filed a new action
17 against the federal defendants, which was assigned to Judge
18 Jenkins. See No C-04-4141 MJJ. After defendants filed a motion to
19 dismiss the complaint based in part on statute of limitations
20 grounds and plaintiff filed her opposition, the undersigned sua
21 sponte related No 04-4141 to No 00-1954.

22 Presently before the court is plaintiff's request for
23 leave to renew her motion to reopen the case. In the alternative,
24 plaintiff requests clarification from the court if the denial of
25 the motion to reopen the case was based on equitable tolling of the
26 statute of limitations.

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II

First, the court has already denied plaintiff's motion to reopen No 00-1954 and plaintiff offers no new arguments why the case should be reopened. Despite the unorthodox format of the present request, plaintiff essentially seeks reconsideration of the court's August 17, 2004, decision not to reopen No 00-1954. As the court noted in adjudicating another of plaintiff's requests for reconsideration, there are typically three grounds on which a court will grant reconsideration: (1) newly discovered evidence; (2) a clearly erroneous or manifestly unjust earlier decision of the court; or (3) an intervening change in controlling law. See School Dist No 1J, Multnomah County v ACandS, Inc, 5 F3d 1255, 1263 (9th Cir 1993).

Plaintiff does not present new evidence or argue that a change in controlling law has occurred. Rather, plaintiff's sole rationale for seeking reconsideration appears to be her belated realization of the effect of the court's dismissal of No 00-1954: namely, that the filing date of the new case, rather than the filing date of the dismissed case, would determine whether her federal claims were barred by the applicable statute of limitations. Based on this belated realization, plaintiff argues that the court's refusal to reopen No 00-1954 is manifestly unjust. Yet plaintiff's misapprehension, unfortunate though it may be, does not create a ground for reconsideration. The gravamen of the court's decision not to reopen No 00-1954 was plaintiff's failure to provide the court with an accurate address as required by Civil Local Rule 3-11(a), as well as her failure to monitor the case for well over a year. Because it was based on plaintiff's inaction,

1 the court's refusal to reopen was not manifestly unjust.

2 It also appears that plaintiff construed the court's
3 August 17, 2004, order as implicitly tolling the statute of
4 limitations for her federal claims. See Doc #127 at 4 ("If
5 defendants are allowed to succeed on the basis that the complaint
6 is time-barred, it will defeat the intent of the Court's order
7 denying the reopening on the basis that Plaintiff can refile.")
8 Plaintiff, however, may not move the court to reconsider an order
9 simply because she failed immediately to grasp its legal effect.
10 In the August 17, 2004, order, the court merely stated:

11 [T]he court's September 30, 2003, dismissal of the case
12 was without prejudice. Plaintiff is thus free to file a
13 new case on the basis of the claims the court has
14 previously dismissed. Should plaintiff wish to proceed
with her claims, her recourse is simply to open a new
case and file a new complaint, as opposed to attempting
to reopen this case.

15 Doc #125. The order contained no decision regarding the applicable
16 statute of limitations. Nor was the decision to deny the reopening
17 of plaintiff's case made, as plaintiff asserts, "on the basis that
18 Plaintiff can refile." Doc #127 at 4. As discussed above, the
19 decision was based on plaintiff's failure to comply with the
20 court's previous orders and the fact that a motion to reopen was
21 not plaintiff's proper recourse.

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IV

In sum, plaintiff offers no adequate ground for the court to reconsider its August 17, 2004, denial of plaintiff's request to reopen No 00-1954. Accordingly, plaintiff's request to renew her motion to reopen No 00-1954 is DENIED. The case management conference and motion hearing set for July 21, 2005, is VACATED. The parties may proceed with any remaining issues in No 04-4141.

IT IS SO ORDERED.



VAUGHN R WALKER

United States District Chief Judge